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9 Attorneys for Complainant

10 **BEFORE THE**
PHYSICAL THERAPY BOARD OF CALIFORNIA
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

13 JOHN KENNEDY, P.T.A.
14 10406 Camino San Thomas
15 San Diego, CA 92127

16 Physical Therapist Assistant License No. AT
17 2377

18 Respondent.

Case No. 1D-2004-63773

OAH No. L2007020711

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

19
20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
21 above-entitled proceedings that the following matters are true:

22 **PARTIES**

23 1. Steven K. Hartzell (Complainant) is the Executive Officer of the Physical
24 Therapy Board of California. He brought this action solely in his official capacity and is represented
25 in this matter by Edmund G. Brown Jr., Attorney General of the State of California, by Martin W.
26 Hagan, Deputy Attorney General.

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2. Respondent JOHN KENNEDY, P.T.A. (Respondent) is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about December 17, 1990, the Physical Therapy Board of California issued Physical Therapist Assistant License No. AT 2377 to Respondent. The Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 1D-2004-63773 and will expire on March 31, 2008, unless renewed.

JURISDICTION

4. Accusation No. 1D-2004-63773 was filed before the Physical Therapy Board of California (Board), Department of Consumer Affairs, and is currently pending against Respondent. A true and correct copy of the Accusation and all other statutorily required documents were properly served on Respondent on December 12, 2006. Respondent timely filed his Notice of Defense contesting the Accusation. A true and correct copy of Accusation No. 1D-2004-63773 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read and fully understands the charges and allegations in Accusation No. 1D-2004-63773. Respondent has also carefully read and fully understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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1 **CULPABILITY**

2 8. Respondent admits the truth of each and every charge and allegation in
3 Accusation No. 1D-2004-63773 with the exception of a qualified admission as to the first sentence
4 in Paragraph 12. As to the first sentence of Paragraph 12, Respondent admits that he aided and
5 abetted the unlicensed practice of physical therapy when he, as a physical therapist assistant,
6 assigned the amount of time that registered physical therapists or physical therapist license applicants
7 could spend evaluating patients.

8 9. Respondent agrees that his Physical Therapist Assistant License is subject to
9 discipline and he agrees to be bound by the Physical Therapy Board of California (Board)'s
10 imposition of discipline as set forth in the Disciplinary Order below.

11 **CONTINGENCY**

12 10. This stipulation shall be subject to approval by the Physical Therapy Board
13 of California. Respondent understands and agrees that counsel for Complainant and the staff of the
14 Physical Therapy Board of California may communicate directly with the Board regarding this
15 stipulation and settlement, without notice to or participation by Respondent. By signing the
16 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to
17 rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to
18 adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order
19 shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action
20 between the parties, and the Board shall not be disqualified from further action by having considered
21 this matter.

22 **OTHER MATTERS**

23 11. The parties understand and agree that facsimile copies of this Stipulated
24 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force
25 and effect as the originals.

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1. **PUBLIC REPROVAL**: Respondent, as the holder of Physical Therapist Assistant License No. AT 2377 shall be publicly reprovved by a letter from the Physical Therapy Board of California subject to the terms set forth herein. The issuance of this public reprovral shall be conditional on Respondent's full compliance with the California Law Examination and his obligations in regards to cost recovery which are conditions precedent to the issuance of this public reprovral. The letter from the Physical Therapy Board shall contain the following public reprovral:

You have taken and passed the Physical Therapy Board of California's Written Examination on the Laws and Regulations Governing the Practice or Performance of Physical Therapy and have satisfied your obligation in regard to cost recovery. Accordingly, pursuant to the authority of California Business and Professions Code section 495, the Physical Therapy Board of California hereby issues this public reproof.

1 2. **CALIFORNIA LAW EXAMINATION - WRITTEN EXAM ON THE**
2 **LAWS AND REGULATIONS GOVERNING THE PRACTICE OR PERFORMANCE OF**
3 **PHYSICAL THERAPY** Within 90 days of the effective date of this decision, respondent shall

4 take and pass the Board's written examination on the laws and regulations governing the practice of
5 physical therapy in California. If respondent fails to pass the examination, respondent shall be
6 suspended from the practice of physical therapy until a repeat examination has been successfully
7 passed.

8 3. **COST RECOVERY** The respondent is ordered to reimburse the Board the
9 actual and reasonable prosecutorial costs incurred by the Board in the amount of \$15,360.50. Said
10 costs shall be reduced, however, and the remainder forgiven, if Respondent pays \$1,000.00 within
11 ninety (90) days of the effective date of the Decision. In the event Respondent fails to pay the
12 \$1,000.00 within ninety days (90) days of the Decision, the full amount of costs in the amount of
13 \$15,360.50 shall be immediately due and payable. Failure to pay the ordered reimbursement shall
14 constitute a violation of this order. The filing of bankruptcy by Respondent shall not relieve
15 Respondent of his responsibility to reimburse the Board. If Respondent is in default of his
16 responsibility to reimburse the Board, the Board will collect cost recovery from the Franchise Tax
17 Board, the Internal Revenue Service or by any other means of attachment of earned wages legally
18 available to the Board. Failure to fulfill the obligation could also result in attachment to the
19 Department of Motor Vehicle registrations and/or license renewals.

20 4. **OBEY ALL LAWS** Respondent shall obey all federal, state and local laws,
21 and statutes and regulations governing the practice, inspections and reporting, of physical therapy
22 in California. As part of this provision, Respondent agrees that, as a physical therapist assistant, he
23 will not direct actual patient care which shall be within the purview of the registered physical
24 therapist. As part of this provision, Respondent also agrees that he will not provide direct patient
25 care while serving in a management or supervisory position at the Pacific Regents facility or while
26 serving in a management or supervisory position at any other facility that provides physical therapy
27 services.

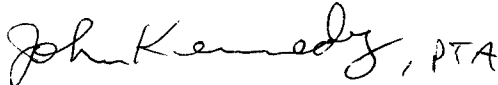
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1 4. **FAILURE TO COMPLY WITH DISCIPLINARY ORDER**: A material
2 breach by Respondent of this disciplinary order shall constitute unprofessional conduct and shall be
3 a basis for further disciplinary action by the Board.

4 **ACCEPTANCE**

5 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand
6 the stipulation and the effect it will have on my Physical Therapist Assistant License No. AT 2377.
7 I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and
8 intelligently, and agree to be bound by the Decision and Order of the Physical Therapy Board of
9 California.

10 DATED: 4-25-2007.



JOHN KENNEDY, P.T.A.
Respondent

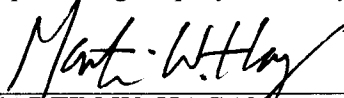
13 **ENDORSEMENT**

14 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
15 submitted for consideration by the Physical Therapy Board of California of the Department of
16 Consumer Affairs.

17
18 DATED: 4/30/07

19 EDMUND G. BROWN JR., Attorney General
20 of the State of California

21 THOMAS S. LAZAR
22 Supervising Deputy Attorney General



MARTIN W. HAGAN
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 1D-2004-63773

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of the State of California
THOMAS LAZAR
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Attorneys for Complainant

**BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

JOHN KENNEDY, P.T.A.
10406 Camino San Thomas
San Diego, CA 92127

Physical Therapy Assistant Certificate No. AT
2377

Respondent.

FILED
STATE OF CALIFORNIA
PHYSICAL THERAPY BOARD OF CALIFORNIA

SACRAMENTO, CA December 12, 2006
BY Chetty ANALYST

Case No. 1D-2004-63773

OAH No.

ACCUSATION

Complainant alleges:

PARTIES

1. Steven K. Hartzell (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California, Department of Consumer Affairs.

2. On or about December 17, 1990, the Physical Therapy Board of California issued Physical Therapy Assistant (PTA) Certificate Number AT 2377 to JOHN KENNEDY, P.T.A. (Respondent). The Physical Therapy Assistant Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2008, unless renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Physical Therapy Board of California
3 (Board), Department of Consumer Affairs, under the authority of the following laws. All section
4 references are to the Business and Professions Code unless otherwise indicated.

5 4. Section 2660 of the Code states:

6 The board may, after the conduct of appropriate proceedings under the
7 Administrative Procedure Act, suspend for not more than 12 months, or revoke, or
8 impose probationary conditions upon any license, certificate, or approval issued
9 under this chapter for unprofessional conduct that includes, but is not limited to, one
10 or any combination of the following causes:

11 "...

12 "(j) The aiding or abetting of any person to violate this chapter or any
13 regulations duly adopted under this chapter.

14 "(k) The aiding or abetting of any person to engage in the unlawful practice
15 of physical therapy.

16 "..."

17 **COST RECOVERY**

18 5. Section 2661.5 of the Code states, in pertinent part:

19 "(a) In any order issued in resolution of a disciplinary proceeding before the
20 board, the board may request the administrative law judge to direct any licensee
21 found guilty of unprofessional conduct to pay to the board a sum not to exceed the
22 actual and reasonable costs of the investigation and prosecution of the case...."

23 **FIRST CAUSE FOR DISCIPLINE**

24 **(Aiding and Abetting the Unauthorized Practice of Physical Therapy)**

25 6. Respondent is subject to disciplinary action under section 2660, as defined
26 by sections 2660 (j) and (k) of the Code, in that Respondent aided and abetted the unlawful practice
27 of physical therapy. The circumstances are as follows:

28 ////

1 7. Respondent was the Rehabilitation Director at RehabNet, Inc. (RehabNet),
2 which contracted to provide physical therapy services at the Springs at Pacific Regent (Pacific
3 Regent), a skilled-care facility. Respondent has been the Rehabilitation Director at RehabNet, Inc.,
4 from approximately September 2002 to present.

5 8. In his capacity as Rehabilitation Director at RehabNet, Respondent handled,
6 among other things, staffing, scheduling, billing, and other management functions related to
7 rendering physical therapy services by RehabNet for Pacific Regent. As the Rehabilitation Director,
8 Respondent was responsible for directing and assigning personnel for the performance of physical
9 therapy services. To assist with fulfilling staffing needs, Respondent occasionally used the services
10 of a placement agency, also referred to as a registry, to supplement staffing when the physical
11 therapy treatment activity increased beyond the existing physical therapy staff's capacity.

12 9. Respondent aided and abetted the unlicensed practice of physical therapy by
13 assigning physical therapist assistants and physical therapist license applicants to perform patient
14 evaluations without the required direct and immediate supervision of a licensed physical therapist.
15 Respondent admitted during his investigatory interview that, on occasion, physical therapist license
16 applicants had performed physical therapy services without the direct supervision of a licensed
17 physical therapist.

18 10. A review of patient records revealed that patient records were missing the
19 required co-signature of a licensed physical therapist for services provided by physical therapist
20 license applicants including, but not limited to, the following:

- 21 (a) No co-signature for Physical Therapist License Applicant (PTLA)
22 Ayoub regarding Patient A.S. (7-23-03);
- 23 (b) No co-signature for PTLA Ayoub regarding Patient R.W. (7-23-03);
- 24 (c) No co-signature for PTLA Ratcliff regarding Patient D.L. (7-25-03);
- 25 (d) No co-signature for PTLA Ratcliff regarding Patient V.P. (7-25-03);
- 26 (e) No co-signature for PTLA Ayoub regarding Patient T.B. (7-28-03);
- 27 (f) No co-signature for PTLA Ayoub regarding Patient A.S. (7-28-03);
- 28 (g) No co-signature for PTLA Ayoub regarding Patient M.S. (7-28-03);

- (h) No co-signature for PTLA Ratcliff regarding Patient M.S. (7-29-03);
- (i) No co-signature for PTLA Ratcliff regarding Patient B.N. (7-29-03);
- (j) No co-signature for PTLA Ratcliff regarding Patient V.P. (7-25-03);
- (k) No co-signature for PTLA Ratcliff regarding Patient M.S. (7-30-03);
- (l) No co-signature for PTLA Ratcliff on Patient Ma.S. (7-30-03);
- (m) No co-signature for PTLA Ratcliff on Patient M.S. (7-31-03);
- (n) No co-signature for PTLA Ratcliff on Patient R.W. (7-31-03);
- (o) No co-signature for PTLA Ayoub regarding Patient T.B. (8-5-03);
- (p) No co-signature for PTLA Ratcliff regarding Patient J.H. (8-5-03);
- (q) No co-signature for PTLA Ayoub regarding Patient J.H. (8-6-03);
- (r) No co-signature for PTLA Ratcliff on Patient D.L. (8-7-03);
- (s) No co-signature for PTLA Ratcliff on Patient M.S. (8-7-03);
- (t) No co-signature for PTLA Ayoub regarding Patient R.S. (8-7-03);
- (u) No co-signature for PTLA Ratcliff regarding Patient R.S. (8-7-03);
- (v) No co-signature for PTLA Ratcliff regarding Patient R.W. (8-7-03);
- (w) No co-signature for PTLA Ayoub regarding Patient D.L. (8-8-03);
- (x) No co-signature for PTLA Ayoub regarding Patient V.P. (8-8-03);
- (y) No co-signature for PTLA Ratcliff regarding Patient J.S. (8-11-03);
- (z) No co-signature for PTLA Ratcliff regarding Patient D.L. (8-12-03);
- (aa) No co-signature for PTLA Ratcliff regarding Patient T.S. (8-13-03); and
- (ab) No co-signature for PTLA Ratcliff regarding Patient J.S. (8-13-03).

11. There were also times when physical therapist license applicants worked longer than any available supervising physical therapist including, but not limited to the following: during the period of July 23 to August 8, 2003, PTLA Ayoub was scheduled, on at least three occasions, to work longer than any available supervising physical therapist; and during the period of July 25 to August 13, 2003, PTLA Ratcliff was scheduled, on at least eight occasions, to work longer than any available supervising physical therapist.

1 12. Respondent also aided and abetted the unlicensed practice of physical therapy
2 when he, as a physical therapy assistant, designed treatment plans and assigned the amount of time
3 that registered physical therapists, physical therapist assistants or physical therapist license applicants
4 could spend evaluating and treating patients. A review of Physical Therapy Charge Sheets include
5 handwritten entries by Respondent indicating how many units (1 unit equals fifteen minutes) of
6 evaluation or treatment time each patient was to receive. Respondent also assigned all evaluations
7 for fifteen minutes thereby not allowing the physical therapist to determine the appropriate course
8 of the evaluation considering that some patients would need a more thorough evaluation depending
9 on the findings of the physical therapist.

10 13. While serving in his capacity as the Rehabilitation Director at RehabNet,
11 Respondent, on occasion, also served a dual role of examining patients as a physical therapist
12 assistant. As of the date of his investigatory interview, Respondent admitted that he continued this
13 dual role of serving as Rehabilitation Director and as a PTA, though on a much more limited basis,
14 treating patients "once in a blue moon." Specific examples of Respondent serving in this dual role
15 of Rehabilitation Director and physical therapist assistant include, but are not limited to the
16 following:

- 17 (a) Respondent supervised staff and also treated Patient R.W. (8-4-03);
- 18 (b) Respondent supervised staff and also treated Patient R.W. (8-11-03);
- 19 (c) Respondent supervised staff and also treated Patient J.S. (8-12-03);
- 20 (d) Respondent supervised staff and also treated Patient J.S. (8-13-03);
- 21 (e) Respondent supervised staff and also treated Patient D.L. (8-15-03);
- 22 (f) Respondent supervised staff and also treated Patient D.L. (8-16-03);
- 23 (g) Respondent supervised staff and also treated Patient J.H. (8-19-03);
- 24 (h) Respondent supervised staff and also treated Patient A.S. (9-2-03);
- 25 (i) Respondent supervised staff and also treated Patient A.S. (9-3-03);
- 26 and
- 27 (j) Respondent supervised staff and also treated Patient A.S. (9-5-03);

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1 **PRAYER**


2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Physical Therapy Board of California issue a decision:

4 1. Revoking or suspending Physical Therapist Assistant Certificate No. AT 2377,
5 issued to JOHN KENNEDY, P.T.A.

6 2. Ordering JOHN KENNEDY, P.T.A. to pay the Physical Therapy Board of
7 California the reasonable costs of the investigation and enforcement of this case, pursuant to
8 Business and Professions Code section 2661.5; and

9 3. Taking such other and further action as deemed necessary and proper.

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11 DATED: 12/12/06

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14 
15 STEVEN K. HARTZELL
16 Executive Officer
17 Physical Therapy Board of California
18 Department of Consumer Affairs
19 State of California
20 Complainant

21 SD2006802020

22 Kennedy, John-Accusation-Final.wpd
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**BEFORE THE
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DEPARTMENT OF CONSUMER AFFAIRS
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In the Matter of the Accusation Against:

JOHN KENNEDY, P.T.A.
10406 Camino San Thomas
San Diego, CA 92127

Physical Therapist Assistant License No. AT
2377

Respondent.

Case No. 1D-2004-63773

OAH No. L2007020711

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Physical Therapy Board of California, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on _____.

It is so ORDERED _____.

FOR THE PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS